

HISTORICAL DIVISION[223]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

The amendments to Chapter 48 clarify definitions of commercial and noncommercial properties; change the threshold for commercial projects; change the cap for small projects; and allow for a 12-month extension for a project that reaches 60 months and is not complete but has already expended at least 50 percent of the project’s qualified rehabilitation expenses in accordance with 2013 Iowa Acts, Senate File 436.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the immediate need for the amendments to implement the provisions of 2013 Iowa Acts, Senate File 436. The application filing window begins July 1. The standard rule-making process would delay this requirement by approximately six months, making it more difficult for projects to meet their project commencement requirements, as stipulated by the Iowa Code.

In compliance with 2013 Iowa Acts, House File 586, section 1, the Administrative Rules Review Committee at its July 9, 2013, meeting reviewed the Department’s findings and the amendments and approved the Emergency adoption.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on July 9, 2013, as they confer a benefit on constituents.

These amendments are also published herein under Notice of Intended Action as **ARC 0897C** to allow for public comment. This emergency filing permits the Department to implement the new provisions of the law.

The rule making will have no fiscal impact.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 303 and chapter 404A as amended by 2013 Iowa Acts, Senate File 436.

These amendments became effective July 9, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **223—48.2(303,404A)**, definitions of “Barn,” “Commercial property” and “Substantial rehabilitation,” as follows:

“*Barn*” means an agricultural building or structure, in whatever shape or design, which ~~is~~ was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

“*Commercial property*” means a building ~~used for retail, office, or other uses not otherwise defined in this rule~~ used in a trade or business or held for the production of income.

“*Substantial rehabilitation*” means qualified rehabilitation costs that meet or exceed the following: (1) in the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least \$50,000, whichever is less; or (2) in the case of ~~residential~~ noncommercial property ~~or barns~~, costs totaling at least \$25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

ITEM 2. Adopt the following new definition in rule **223—48.2(303,404A)**:

“*Noncommercial property*” means a building not used for a commercial purpose as defined herein.

ITEM 3. Amend rule 223—48.4(303,404A) as follows:

223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.

48.4(1) No change.

48.4(2) Any submission of a part three of the application with qualified rehabilitation costs of more than ~~\$500,000~~ \$750,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs incurred in the time period established in subrule 48.5(2).

ITEM 4. Amend rule 223—48.5(303,404A) as follows:

223—48.5(303,404A) Rehabilitation cost limits and amount of credit.

48.5(1) to 48.5(5) No change.

48.5(6) For applicants receiving credits through the small projects fund, the cumulative total for multiple applications for a single building shall not exceed ~~\$500,000~~ \$750,000 in qualified rehabilitation costs. The SHPO will not accept an application by the same owner for a building previously receiving credits through the small projects fund that causes the cumulative total to exceed ~~\$500,000~~ \$750,000. The applicant may either:

a. No change.

b. Apply for only the qualified rehabilitation costs up to a cumulative total of ~~\$500,000~~ \$750,000. If the applicant has already received and claimed a tax credit certificate on the applicant's annual tax return, the applicant shall select this option.

ITEM 5. Amend rule 223—48.6(303,404A) as follows:

223—48.6(303,404A) Application and review process.

48.6(1) to 48.6(7) No change.

48.6(8) Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application.

a. No change.

b. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of ~~\$500,000~~ \$750,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over ~~\$500,000~~ \$750,000: The SHPO shall notify the applicant that the applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Claim only the final qualified rehabilitation costs up to ~~\$500,000~~ \$750,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than ~~\$125,000~~ \$187,500 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

d. No change.

48.6(9) and 48.6(10) No change.

ITEM 6. Amend rule 223—48.7(303,404A) as follows:

223—48.7(303,404A) Tax credit funds.

48.7(1) *The small projects fund.* The SHPO shall reserve 10 percent of the tax credit allocation for any tax credit year in a small projects fund for projects with final qualified rehabilitation costs totaling ~~\$500,000~~ \$750,000 or less.

a. At the end of each state fiscal year, any credits in the small projects fund that have not been reserved for small projects shall be available for small projects in subsequent fiscal years.

b. If the small projects fund is fully reserved, any applications for small projects received after full reservation of the small projects fund may be eligible for the statewide fund.

48.7(2) to 48.7(7) No change.

ITEM 7. Amend rule 223—48.8(303,404A) as follows:

223—48.8(303,404A) Sequencing of applications for review.

48.8(1) *Order of review.* The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of ~~\$500,000~~ \$750,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing and prioritization system to establish the order in which applications will be reviewed.

a. Applications for projects with qualified rehabilitation costs of ~~\$500,000~~ \$750,000 or less applying for credits from the small projects fund will be accepted and reviewed throughout the calendar year until all available credits from that fund are reserved. When all available credits are reserved from the small projects fund, subsequent applications will be accepted utilizing the procedures in subrules 48.8(2) to 48.8(7).

b. No change.

48.8(2) *Filing window.* Part two applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed. ~~The filing window for applications submitted in July 2011 will be extended to August 5, 2011. The filing window for applications submitted in July 2013 will be extended to July 31, 2013.~~

48.8(3) *Initial sequencing process.* An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category and subcategory, each application within the assigned category and subcategory will be sequenced in accordance with subrule 48.8(4).

a. Category A projects do not need to be resubmitted during the filing window and are comprised of two subcategories in the following order:

(1) Projects reviewed in the previous year's sequencing and review process that did not receive a reservation for the full 25 percent of their qualified rehabilitation costs.

(2) Projects with final qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) "~~b~~" "d" and which could not be otherwise reserved from available credits in the appropriate fund.

b. and c. No change.

48.8(4) to 48.8(7) No change.

ITEM 8. Amend rule 223—48.11(303,404A) as follows:

223—48.11(303,404A) Project completion and eligible property placed in service.

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the eligible property must be placed in service as follows:

a. No change.

b. For projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009: The project shall be completed and the eligible property shall be placed in

service within 60 months of the date on which part two of the application was approved or 72 months of the date on which part two of the application was approved if more than 50 percent of the qualified rehabilitation costs are incurred within 60 months of the date on which part two of the application was approved and the applicant requests the 12-month extension in writing from the SHPO.

(1) If the applicant requests the 12-month extension from the SHPO to complete the project and place the building in service, the applicant must complete a qualified rehabilitation costs schedule and cover letter documenting the expenditure of more than 50 percent of the qualified rehabilitation costs estimated in part two of the application. This report and cover letter are due within 30 days of the end of the 60-month period. Information about the qualified rehabilitation costs schedule is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. The qualified rehabilitation costs schedule may be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

(2) If the applicant does not request the additional 12 months from the SHPO, the applicant will be held to the requirement that the building be placed in service within 60 months of the date on which part two of the application was approved.

48.11(2) No change.

ITEM 9. Amend rule 223—48.14(303,404A) as follows:

223—48.14(303,404A) Redemption of tax credit certificate. The tax credit holder shall attach the tax credit certificate and a copy of the signed part three of the application to the taxpayer's state income tax return and submit these documents to the department of revenue in the tax year for which the tax credit certificate is valid or the tax year in which the rehabilitation project was completed, whichever is the later.

[Filed Emergency 7/9/13, effective 7/9/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.